

**RULES OF THE SUPREME COURT  
OF VIRGINIA**

**Part 5 The Supreme Court**

**RULE 5:17 Petition for Appeal**

(a) **Time for Filing.** – In every case in which the appellate jurisdiction of this Court is invoked, a petition for appeal must be filed with the clerk of this Court:

(1) in the case of an appeal direct from a trial court, not more than three months after entry of the order appealed from; or

(2) in the case of an appeal from the Court of Appeals, within 30 days after entry of the judgment appealed from or a denial of a petition for rehearing.

(b) **Copy to Opposing Counsel.** – At the time the petition for appeal is filed, a copy of the petition shall be served on counsel for the appellee.

(c) **Form and Content.** – Under a separate heading entitled “Assignments of Error,” the petition shall list the specific errors in the rulings below upon which the appellant intends to rely. Only errors assigned in the petition for appeal will be noticed by this Court. Where appeal is taken from a judgment of the Court of Appeals, only assignments of error relating to questions presented in, or to actions taken by, the Court of Appeals may be included in the petition for appeal to this Court. An assignment of error which merely states that the judgment or award is contrary to the law and the evidence is not sufficient. If the petition for appeal does not contain assignments of error, the appeal will be dismissed.

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Under another separate heading entitled "Questions Presented," the petition shall list the questions upon which the appellant intends to submit argument, with a clear and exact reference to the particular assignment of error to which each question relates.

Where appeal is taken from a judgment of the Court of Appeals in a case where judgment is made final under Code § 17.1-410, the petition for appeal shall contain a statement setting forth in what respect the decision of the Court of Appeals involves (1) a substantial constitutional question as a determinative issue, or (2) matters of significant precedential value. If the petition for appeal does not contain such a statement, the appeal will be dismissed.

The petition also shall contain:

(1) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases shall be to the Virginia Reports and the Southeastern Reporter. Citations of all authorities shall include the year thereof.

(2) A brief statement of the nature of the case and of the material proceedings in the trial court or commission in which the case originated. This statement shall omit references to any paper filed or action taken that does not relate to the assignments of error.

(3) A clear and concise statement of the facts that relate to the assignments of error, with references to the pages of the record, when there is any possibility that the appellee may question the statement. Any quotation from the record should be brief. When the facts are in dispute, the petition shall so state. The testimony of individual witnesses should not be summarized

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seriatim unless the facts are in dispute and such a summary is necessary to support the appellant's version of the facts.

(4) The principles of law, the argument, and the authorities relating to each assignment of error. With respect to each assignment of error, the principles, the argument, and the authorities shall be stated in one place and not scattered through the petition. At the option of counsel, the argument may be preceded by a brief summary.

(5) A short conclusion stating the precise relief sought.

Seven copies of the petition shall be filed. Carbon copies are acceptable. Except by leave of a justice of this Court, a petition for appeal shall not exceed 35 typed or 25 printed pages.

(d) Single Petition in Separate Cases. — Whenever two or more cases were tried together in the court or commission below, one petition for appeal may be used to bring all such cases before this Court even though the cases were not consolidated below by formal order.

(e) Required Certificate. — The appellant shall include within the petition for appeal a certificate stating:

(1) the names of all appellants and appellees, the names, addresses, and telephone numbers of counsel for each party, and the address and telephone number of any party not represented by counsel;

(2) that a copy of the petition for appeal has been mailed or delivered on the date stated therein to all opposing counsel and all parties not represented by counsel;

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(3) in a criminal case, a statement whether counsel for defendant has been appointed or privately retained; and

(4) whether he desires to state orally to a panel of this Court the reasons why his petition for appeal should be granted, and, if so, whether he wishes to do so in person or by conference telephone call.

(f) Filing Fee. - The petition must be accompanied by a check or money order payable to the clerk of this Court for the amount required by statute. The statutory fee shall be due at the time such petition is presented. The clerk of this Court may file any petition that is not accompanied by such fee if the fee is received by the clerk within ten days of the date the petition for appeal is filed. If the fee is not received within such time, the petition for appeal shall be dismissed.

(g) Oral Argument. - The appellant shall be entitled to state orally, in person or by conference telephone call, to a panel of this Court the reasons why his petition for appeal should be granted. The appellant may waive the right to oral argument on the petition for appeal before a panel by notifying the clerk of this Court and opposing counsel in writing, or by filing a reply brief. If an appellant is not represented by counsel and is incarcerated, the petition for appeal may be considered by the Court without oral argument.

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[SEAL]

SUPREME COURT OF VIRGINIA  
PATRICIA H. KRUEGER, CLERK  
SUPREME COURT BUILDING  
100 NORTH 9TH STREET, 5TH FLOOR  
RICHMOND, VIRGINIA 23219  
(804) 786-2251 V/TDD  
FAX: (804) 786-6249

DOUGLAS B. ROBELEN  
CHIEF DEPUTY CLERK

January 12, 2005

Mr. Martin Byrd Quillen, Sr.  
P.O. Box 145  
Gate City, Virginia 24251-0145

Re: *Martin Byrd Quillen, Sr. v. Christopher Raines, et al.*  
Record No. 050073

Dear Mr. Quillen:

This will acknowledge receipt on January 11, 2005, of your petition for appeal in the above case. You enclosed a \$25 check with your petition; however, as you paid a filing fee in the Court of Appeals and this case was transferred, you are not required to pay a second time. I am, therefore, returning your check to you.

I understand the appellees in this case to be Easter P. Moses, Esq., Charles H. Smith, III, Esq., and Christopher Raines, et al. Although I recognize that this appeal is specifically directed against Mr. Moses and Mr. Smith, please confirm that the "et al." is Moss Trucking Company.

Pursuant to this Court's order of December 8, 2004, you had 30 days within which to file your petition for appeal in this case. Although you mailed your petition on January 7, it does not appear that you sent it by certified or registered

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mail. If you did, please send me the certified/registered mail receipt. For your information, I am enclosing a copy of Rule 5:5, which addresses filing pleadings by mail.

Please make sure to mail a copy of your response to this letter to opposing counsel.

Sincerely,

/s/ [Illegible]  
Douglas B. Robelen  
Chief Deputy Clerk

Enclosure

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**RULES OF THE SUPREME COURT OF VIRGINIA**  
**Part 5 The Supreme Court**

**RULE 5:5. Extension of Time; Filing by Mail. -**

(a) The times prescribed for filing the notice of appeal (Rules 5:9(a), 5:14(a) and 5:21(c)), the transcript or written statement (Rule 5:11), a petition for appeal (Rules 5:17(a) and 5:21(g)) and a petition for rehearing (Rules 5:20 and 5:39), are mandatory. A single extension not to exceed thirty days may be granted if at least three judges of the Court of Appeals concur in a finding that an extension for papers to be filed is warranted by the intervention of some extraordinary occurrence or catastrophic circumstance which was unpredictable and unavoidable. The time period for filing the notice of appeal is not extended by the filing of a motion for a new trial, a petition for rehearing, or a like pleading unless the final judgment is modified, vacated, or suspended by the trial court pursuant to Rule 1:1 or a petition for rehearing is filed in the Court of Appeals. In any such case the time for filing shall be computed from the date of final judgment entered following such modification, vacation, or suspension, or from the date the Court of Appeals refuses a petition for rehearing or enters final judgment following the granting of such a petition.

(b) Any document required to be filed with the clerk of this Court, or filed in the office of the clerk of this Court, shall be deemed to be timely filed if it is mailed postage prepaid to the clerk of this Court by registered or certified mail and if the official receipt therefor be exhibited upon demand of the clerk or any party and it shows mailing within the prescribed time limits. This rule does not apply to documents to be filed in the office of the clerk of the

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trial court or clerk of the Industrial Commission or clerk of the State Corporation Commission.

(c) **Inmate Filing.** - A paper filed by an inmate confined in an institution is timely filed if deposited in the institution's internal mail system with first-class postage prepaid on or before the last day for filing. Timely filing of a paper by an inmate confined in an institution may be established by (1) an official stamp of the institution showing that the paper was deposited in the internal mail system on or before the last day for filing, (2) an official postmark dated on or before the last day for filing, or (3) a notarized statement signed by an official of the institution showing that the paper was deposited in the internal mail system on or before the last day for filing.

### AMENDMENTS:

By order dated June 16, 2000, effective September 1, 2000, a new paragraph (c) was added.

Effective February 1, 2000, the second sentence in subsection (a) was added.

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**[LOGO] UNITED STATES  
POSTAL SERVICE**

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January 18, 2005

Martin B Quillen, Sr.  
P.O. Box 145  
Gate City, VA 24251

Dear Mr. Quillen:

This is to advise that the attached receipt is an official mail receipt from our Downtown Post Office (Bill # 1000401581631 dated 01/07/05).

/s/ Shirley J. Karst  
Shirley J Karst, General Clerk  
U S POSTAL SERVICE

Enc

1001 N EASTMAN RD  
KINGSPORT, TN 37664-9998

PHONE: 423-230-6308  
FAX: 423-246-1600

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KINSPORT MAIN PO  
KINSPORT, Tennessee  
376629998  
4761480781-0096

01/07/2005

(423) 245-5111

04:01:27

Product Description	Sales Receipt		
	Sale Qty	Uni Price	Final Price
RICHMOND VA 23219			\$6.80
Priority Mail			=====
	Issue PVI:		\$6.80
ROANOKE VA 24022			\$3.85
Priority Mail			=====
	Issue PVI:		\$3.85
ROANOKE VA 24011			\$3.85
Priority Mail			=====
	Issue PVI:		\$3.85
KINSPORT TN 37664			\$3.85
Priority Mail			=====
	Issue PVI:		\$3.85
Total:			\$18.35
Paid by:			
Personal Check #2395			\$18.35
Bill#:	1000401581631		
Clerk:	07		

All sales final on stamps and postage  
Refunds for guaranteed services only  
Thank you for your business  
Customer Copy

[SEAL]

SUPREME COURT OF VIRGINIA  
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FAX: (804) 786-6249

DOUGLAS B. ROBELEN  
CHIEF DEPUTY CLERK

January 25, 2005

Mr. Martin Byrd Quillen, Sr.  
P.O. Box 145  
Gate City, Virginia 24251-0145

Re: *Martin Byrd Quillen, Sr. v. Christopher Raines, et al.*  
Record No. 050073

Dear Mr. Quillen:

This will acknowledge receipt of your letter of January 19, 2005, regarding the above case. Your letter will be treated as a motion for extension of time to file your petition for appeal and will be referred to the Court for review.

Sincerely,

/s/ [Illegible]  
Douglas B. Robelen  
Chief Deputy Clerk

DBR/srd

cc: Charles H. Smith, Esq.  
Easter P. Moses, Esq.  
William T. Wray, Esq.

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**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 18th day of February, 2005.*

Martin Byrd Quillen, Sr., Appellant,

against Record No. 050073

Circuit Court No. CL03-10

Christopher Raines et al., Appellees.

From the Circuit Court of Wythe County

On January 24, 2005 came the appellant, in proper person, and filed a letter requesting that the petition for appeal filed in the above-styled case be considered timely filed. Upon consideration whereof, the Court denies the request.

Finding that the appeal did not comply with this Court's order dated December 8, 2004, the Court dismisses the petition for appeal filed in this case.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By: /s/ Shaun A. [Illegible]  
- Deputy Clerk

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[SEAL]

SUPREME COURT OF VIRGINIA  
PATRICIA H. KRUEGER, CLERK  
SUPREME COURT BUILDING  
100 NORTH 9TH STREET, 5TH FLOOR  
RICHMOND, VIRGINIA 23219  
(804) 786-2251 V/TDD  
FAX: (804) 786-6249

DOUGLAS B. ROBELEN  
CHIEF DEPUTY CLERK

March 8, 2005

Mr. Martin Byrd Quillen, Sr.  
P.O. Box 145  
Gate City, Virginia 24251-0145

Re: *Martin Byrd Quillen, Sr. v. Christopher Raines, et al.*  
Record No. 050073

Dear Mr. Quillen:

This will acknowledge receipt of your petition for rehearing in the above case. You filed hard copies of your petition; however, as set forth in Rule 5:20A, a rehearing petition must be filed electronically. Accordingly, please email to scvpfr@courts.state.va.us a copy of your petition for rehearing and appendix. If you cannot file the pleading electronically, then you will need to file a motion with the Court requesting an exception to the electronic filing requirement. Please note that your rehearing petition, which was sent by certified mail on March 4, 2005, will be considered timely filed.

Sincerely,

/s/ Douglas B. Robelen  
Douglas B. Robelen  
Chief Deputy Clerk

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**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 22nd day of April, 2005.*

Martin Byrd Quillen, Sr.,

Appellant,

against Record No. 050073

Circuit Court No. CL03-10

Christopher Raines et al.,

Appellees.

From the Circuit Court of Wythe County

On March 28, 2005 came the appellant, in proper person, and filed a motion for exception to electronic filing requirement with regard to the petition for rehearing filed herein on March 8, 2005.

Upon consideration whereof, the Court grants the motion.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By: /s/ Douglas B. Robelen

Deputy Clerk

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**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 17th day of June, 2005.*

Martin Byrd Quillen, Sr., Appellant,

against Record No. 050073

Circuit Court No. CL03-10

Christopher Raines et al., Appellees.

**Upon a Petition for Rehearing**

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 18th day of February, 2005 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By: /s/ [Illegible] Edwards  
Deputy Clerk

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**ADDENDUM**

**PETITION FOR A WRIT OF CERTIORARI**

This Addendum is to preserve the integrity of the court record wherefore this Court could not analyze the chronological order of events as occurred within the court record without being knowledgeable of the following facts and information.

Petitioner has not been notified to date of any order having been issued by the Court in the matter of petitioner's certified letter dated January 19, 2005 which letter was treated by the Court as a Motion for Extension of Time to File Petition for Appeal for review by the Court (Appendix page 14).

Petitioner disavows any such letter dated January 24, 2005 was filed with the Court by the petitioner, pro se, as claimed by the Court in court order dated February 18, 2005. The court order dated February 18, 2005 is in error due to the non-existence of an alleged January 24, 2005 letter relied upon by the Court in its issuance of above order (Appendix page 17). The erroneous court order dated February 18, 2005 (Appendix page 17) appears, to this Petitioner, as being the authority, upon which the Court used in their determination of denying Petitioner's Petition for Rehearing per Court order dated June 17, 2005 (Appendix page 20), wherefore due to the nonexistent alleged letter dated January 24, 2005 referenced in the February 18, 2005 court order would also cause the June 17, 2005 order to be in error.

No order has been received, to date, from the Court for Petitioner's January 19, 2005 letter classified by the Court as a motion for extension of time to file Petitioner's Petition for Appeal (Appendix page 16), nor was any subsequent notice forwarded from the Court to the Petitioner that the

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Court's classification of January 19, 2005 letter is anything other than a motion for extension of time.

In the event Petitioner's January 19, 2005 letter mailed January 20, 2005 by U.S.P.O. Certified Mail Receipt #7003-2260-0001-9086-6691 and received by Court on January 24, 2005 is alleged to be the letter the Court refers to in court order dated February 18, 2005 (Appendix page 17) and Petitioner's petition for rehearing mailed on March 04, 2005 by U.S.P.O. Certified Mail Receipt #7003-2260-0001-9086-6707 and received by Court on March 08, 2005 wherefore the Court recognizes the Chief Deputy Clerk, Douglas B. Robelen, letter dated March 08, 2005 to Petitioner that the filing date is March 04, 2005 (Appendix page 18) however in court order dated Friday the 22nd day of April, 2005 the Petition for Rehearing filing date is designated as March 08, 2005 (Appendix page 19) wherefore it appears, to this Petitioner, the Virginia Supreme Court disregarded its own Rule 5:5(b) (Appendix page 12) and allows a double standard to exist when the above court orders reference dates of filing other than the actual dates Petitioner mailed documents to the court by U.S. Certified Mail subsequent to January 7, 2005 mailing of Petition for Appeal by U.S. Post Office Priority Mail, U.S. Postal Service letter and official mail receipt (Appendix page 14).

/s/ Martin Byrd Quillen, Sr.  
MARTIN BYRD QUILLEN, SR.  
PETITIONER  
Pro Se  
P.O. Box 145, Rt. #7  
Gate City, Virginia 24251

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